

# EXHIBIT A

1                   **About when did that first knowledge**  
2   **take place?**

3           A.       It's been -- I can't give you a  
4   specific date. It's been over a year. Way over a  
5   year.

6                   I have so many cases, I can't give you  
7   a specific date. But I -- I learned about it on the  
8   Internet.

9           Q.       Okay. Did you learn about it before  
10   speaking with Mr. Harper or Mr. Reese?

11          A.       Yes.

12          Q.       Okay. After learning about it -- well,  
13   let me ask you this first question: what did you  
14   learn about it, from the Internet?

15          A.       I just read a news report of Mr. May  
16   dying in the Fulton County Jail, and use of force  
17   was -- I read the report on the news. It was a news  
18   article on the Internet.

19          Q.       Okay. Do you know the source of that  
20   news article?

21          A.       Repeat that? I didn't hear you.

22          Q.       Certainly. And I'm sorry I interrupted  
23   you again, I think.

24                   Do you know the source of that news  
25   article? -- what entity published it?

1 A. I believe -- "Killed by the Police."

2 It's a Internet -- it's a Internet website --

3 Q. Do you know the --

4 A. -- that lists all the killings that --  
5 in the hands of law enforcement.

6 Q. Okay. Do you know the URL for that  
7 website, Mr. Foster?

8 A. Can you say that again?

9 Q. Certainly. Do you know the URL for  
10 that website?

11 A. No. I don't -- I don't know, no. I do  
12 not. I think it's "Killed by the Police," or  
13 something like that. I don't go on that website very  
14 often.

15 Q. That was going to be my next question.  
16 Do you retain business through the  
17 website "Killed by Police"?

18 A. No. No, I don't retain business from  
19 the website.

20 Q. All right. After learning about this  
21 article -- or after learning about this case from an  
22 article on "Killed by Police," what's the next thing  
23 you remember learning about this case?

24 A. I had reached out to -- I believe it  
25 was Mr. Harper. That's my best recollection.

1 Q. Okay. And do you recall approximately  
2 when you reached out to Mr. Harper?

3 A. No. I don't recall the date. I don't  
4 recall the date or time. It's been over -- way over  
5 a year.

6 Q. Okay. All right.

7 When you reached out to Mr. Harper, did  
8 you do it via e-mail, or did you do it through a  
9 phone call, or -- let me ask this question. Let me  
10 strike that and ask this question: how did you reach  
11 out to Mr. Harper?

12 A. I'm not sure if it was e-mail, or -- I  
13 didn't -- or phone call. I'm not sure.

14 Q. Okay. Mr. Foster, going back one quick  
15 question, do you currently possess any copies of that  
16 article that you reviewed on the "Killed by Police"  
17 website?

18 A. No, I don't.

19 Q. When you reached out to Mr. Harper  
20 about this piece of litigation at some point more  
21 than a year ago, what did you discuss with him about  
22 it?

23 A. I don't recall specifically what I  
24 discussed. I reach out to a lot of attorneys, and  
25 I -- if I see a case that's -- that I believe that

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1 another question about the expert report which we  
2 just looked at, which is Global 58 that you have in  
3 front of you.

4 Since March 25th, 2021, have you made  
5 any changes to that report?

6 A. No.

7 Q. Since March 25th -- did I say 25th?  
8 I'm sorry, Mr. Foster.

9 Yes, March 25th. Since March 25th,  
10 have you come to any additional opinions about this  
11 case that are not reflected in this report?

12 A. No, I have not.

13 Q. Okay. Since March 25th, have you  
14 reviewed any material regarding this case?

15 A. Since I did my report, no, I have not  
16 reviewed additional material.

17 Q. Thank you, Mr. Foster.

18 Mr. Foster, when you were retained in  
19 this case, you approached it without any bias; is  
20 that correct?

21 A. Any bias?

22 Q. Yes, sir.

23 A. I was -- no, I didn't have any bias  
24 towards the case.

25 Q. Thank you, Mr. Foster. That's exactly

1 what I fully expected, and you answered my question.

2 You didn't approach -- when you were  
3 retained in this matter, you approached this case  
4 without any preconceived notions; is that correct?

5 A. That's correct.

6 Q. Okay. Mr. Foster, you understand that  
7 your role in this matter was to gather all the  
8 necessary information, evaluate it using your  
9 expertise, and reach whatever opinions that you  
10 thought the information supported; is that correct?

11 A. I'm -- repeat that question?

12 Q. You understand that your role in this  
13 case was to gather all the necessary information,  
14 evaluate that information using your expertise, and  
15 then reach whatever opinions you thought the  
16 information supported; is that correct?

17 A. Yes. That's what I normally do.

18 Q. Excellent. And is that what you did in  
19 this case?

20 A. Yes. I gather what -- the information  
21 that I received, and I gave my opinion based off my  
22 experience, and my training, and the facts that I  
23 received from this case.

24 Q. Okay. And you give your opinion  
25 regardless of whether your opinion would help or hurt

1     relied in forming your expert opinions."

2                     Do you see that?

3             A.       Yes.

4             Q.       Did you provide -- and I want to make a  
5     distinction between material that Mr. Harper may have  
6     provided to you, and material that you provided to  
7     Mr. Harper. I'm only interested in material you  
8     provided to Mr. Harper.

9                     Did you provide any material to  
10    Mr. Harper about this case, that he did not provide  
11    to you originally?

12            A.       I don't recall providing Mr. Harper any  
13    material about this case.

14            Q.       Okay. All right, did you rely on any  
15    documents, when you formed your expert opinions,  
16    aside from what Mr. Harper provided you?

17            A.       No.

18            Q.       Okay. Mr. Foster, I'm going to skip  
19    No. 4 and I want to point out No. 5: "Copies of all  
20    articles, treatises, publications or presentations  
21    that you have authored, presented, or contributed  
22    to."

23                     Did you provide any treatises,  
24    publications or presentations, that you authored,  
25    presented or contributed to, to Mr. Harper?

1 A. No. I don't recall doing that.

2 Q. Okay. Is there any -- are there any  
3 documents that would refresh your recollection as to  
4 whether or not you did provide any of those articles,  
5 treatises, publications or presentations to  
6 Mr. Harper?

7 A. If you have any document, please  
8 refresh my recollection.

9 Q. I don't. I'm hoping you do, sir.

10 A. No. I do not.

11 Q. Okay. Mr. Foster, No. 6 is, "Copies of  
12 all articles, treatises, publications or  
13 presentations upon which you relied in forming your  
14 opinions about this case."

15 Did you rely on any articles,  
16 treatises, publications or presentations in forming  
17 your opinions about this case?

18 A. No.

19 Q. Okay. Mr. Foster, do you keep time  
20 records relating to your work?

21 A. Do I keep time records?

22 Q. Yes, sir.

23 A. What do you -- what do you -- I  
24 don't -- explain "time records." I don't know --

25 Q. Yes. I understand that you have a



1     retainer agreement with Mr. Harper in this matter.

2     Do you keep records of the amount of time you spend  
3     working on a case?

4             A.       Yes, when it goes over 16 hours, I do.

5             Q.       Okay. Have you spent 16 hours on this  
6     case?

7             A.       No.

8             Q.       Okay. How many hours have you spent on  
9     this case?

10            A.       I don't have a -- I don't keep a  
11     running log. I could give you my best estimate,  
12     which is 10 to 15 hours. Between that.

13            Q.       Okay. Does 10 to 15 hours represent  
14     all of the work you performed in this case?

15            A.       Yes.

16            Q.       Okay. Have you performed any work on  
17     this case that's not included in that 10 to 15 hours?

18            A.       No.

19            Q.       Okay. Mr. Foster, I want to talk about  
20     your history.

21                    And you know what? Before we do that,  
22     we've been at this for about an hour and 20 minutes,  
23     including some breaks. I forgot to mention, if  
24     there's -- at any point you'd like to take a break,  
25     please let me know and we'll accommodate you.

1 Do you see that page?

2 A. Yes.

3 Q. Okay. I want to go over these cases  
4 real briefly.

5 In the Delphine Taylor versus WMATA  
6 case that you identified, you indicate here that you  
7 testified on behalf -- or that you gave a deposition,  
8 or testified at trial, on behalf of plaintiff; is  
9 that correct?

10 A. Yes.

11 Q. Okay. Did you give deposition in that  
12 case?

13 A. I did a deposition. That case is  
14 still -- far as my knowledge, it's still going on.

15 Q. Okay. So you've not testified at  
16 trial; is that correct?

17 A. Not yet.

18 Q. Okay. Mr. Foster, tell me about that  
19 case. What was your -- what was that case about?

20 A. That case was a -- the use of force  
21 case. Ms. Taylor was a patron -- she was traveling  
22 on the D.C. subway system -- the Metro system. And  
23 she was stopped by the police and she was handcuffed.

24 She didn't put up any resistance, but  
25 the handcuff that the officer use, caused her great

1 pain and permanently damaged her hand, which she had  
2 to have surgery, and lost the use of her hand,  
3 because they applied the handcuff extremely too  
4 tight.

5 After she complained that the handcuff  
6 was tight, they didn't do anything about it. And  
7 they kept her in that restraint for over two hours --  
8 two to three hours. And she wind up -- they wind up  
9 damaging nerve and ligaments in her thumb and finger  
10 by the use of the handcuff.

11 Q. Okay. Thank you, Mr. Foster.

12 So am I correct that that case involved  
13 an arrest?

14 A. Yes.

15 Q. Okay. And were you -- did you provide  
16 expert testimony on police procedure, in that case?

17 A. Yes.

18 Q. Okay.

19 A. In the deposition.

20 Q. In the deposition. Thank you,  
21 Mr. Foster.

22 The next case on our list is State  
23 versus -- State of Florida versus Rhonda White-Scott.

24 Do you see that?

25 A. Yes.

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1 A. Yes.

2 Q. Did you give a deposition in that case?

3 A. Yes.

4 Q. And when did you give that deposition?

5 A. It was -- I believe it was in 2020,  
6 before the -- no, excuse me. 2019.

7 Q. Okay. Did you testify at trial in that  
8 case?

9 A. No. That case was settled.

10 Q. Tell me about this case, Mr. Foster.

11 A. Crystal Jackson was a inmate with  
12 Inmate Services. She was being transported from  
13 California back to Mobile, Alabama. It was a private  
14 prisoner transport case.

15 And she was sexually assaulted,  
16 multiple times, during a four-day trip to the jail by  
17 the Inmate Services.

18 Q. And --

19 A. She was raped by -- while being  
20 transported with other inmates, by the person that  
21 was transporting her.

22 Q. Mr. Foster, you mentioned that she was  
23 an inmate. Had she been convicted of a crime, at the  
24 time of this incident?

25 A. No. But she was in the custody. She

1 testimony. I recognize police and sheriff's  
2 deputies as law enforcement officers.

3 Q. (By Mr. Loegel) Okay. You know, I  
4 might be able to clarify this.

5 You mentioned before, Mr. Carter was  
6 shot 17 times; is that correct?

7 A. Yes. That -- about that many times.

8 Q. So am I correct that some of the shots  
9 were fired by sheriff's deputies, and some of them  
10 were fired by police officers?

11 A. It was fired by sheriff deputies.

12 Q. Okay. So he was not shot by any police  
13 officer, in that case.

14 A. Not that I recall.

15 Q. Okay. Mr. Foster, my next question is,  
16 how many of these six cases that we're discussing  
17 involved a correctional environment?

18 And do you understand my question, of  
19 what a correctional environment is?

20 A. Yes.

21 Q. How many of these involved a  
22 correctional environment?

23 A. Let's see. One, two -- two cases.

24 Q. And which two, Mr. Foster?

25 A. Ms. Taylor versus WMATA, and Crystal

1 Jackson versus Inmate Services.

2 Q. Okay. And going back to Taylor, I  
3 understand that was a police arrest case; is that  
4 correct?

5 A. Yes.

6 Q. And so did that involve -- was that  
7 arrest made in a jail, or in a correctional facility?

8 A. No. It was made on the streets of  
9 Washington. In the subway of Washington, D.C.

10 Q. Okay. And do I understand Crystal  
11 Jackson involved -- you write here "corrections and  
12 jail procedures," correct?

13 A. Right.

14 Q. And that was corrections and jail  
15 procedures by Inmate Services Inc.; is that right?

16 A. Yes.

17 Q. Okay. And it involved a transport of  
18 an individual, correct?

19 A. Yes.

20 Q. Okay. Mr. Foster, of these six cases,  
21 how many times have you testified on behalf of the  
22 state in the criminal matters?

23 A. In these cases, none.

24 Q. How many times have you testified on  
25 behalf of a defendant -- in those six cases, how many

1 A. Yes.

2 Q. And you represented Ms. Jackson?

3 A. Yes.

4 Q. Okay. And in Rudy Joseph versus City  
5 of Tallahassee and Officer Damon Miller, that was a  
6 civil case; is that correct?

7 A. Yes.

8 Q. And you represented Mr. Joseph?

9 A. Yes.

10 Q. Okay. And in Hattie Reynolds versus  
11 the City of Daytona Beach, that was a civil case,  
12 wasn't it?

13 A. Yes.

14 Q. And you represented Ms. Reynolds?

15 A. Yes.

16 Q. Mr. Foster, looking at this list, am I  
17 correct that, in the cases you have testified in, the  
18 only one involving correction, and use of force, was  
19 Crystal Jackson versus Inmate Services; is that  
20 correct?

21 A. According to that list, yes.

22 Q. Are there other cases that you've  
23 testified in as an expert witness that involved  
24 corrections and use of force, that aren't on this  
25 list?

1           A.       There is a case that I recall now.

2       It's -- that's not on that list. It's a juvenile  
3       detention case.

4                   I was -- gave a deposition against the  
5       State of Florida Juvenile Justice.

6           Q.       And when did you give that  
7       deposition? -- do you recall?

8           A.       It was -- my best recollection was  
9       2019.

10          Q.       And what was the name of -- I guess  
11       what was the name of the plaintiff in that case?

12          A.       I can't recall the name of the  
13       plaintiff.

14          Q.       Okay.

15          A.       But I know it was against the Florida  
16       Juvenile Justice.

17          Q.       And you gave a deposition in 2019 in  
18       that case, and it was a civil matter?

19          A.       Yes.

20          Q.       Okay. And that's not on this list.  
21                   And you represented the plaintiff in  
22       that matter?

23          A.       Yes.

24          Q.       Tell me the circumstances of that case.

25          A.       It was a juvenile that was being



1 detained by the Florida Department of Juvenile  
2 Justice in Miami, where he was told by the detention  
3 officer to fight another juvenile, and he refused.

4 And the officer got another juvenile to  
5 start a fight, and the officer wind up -- that same  
6 officer wind up breaking up the fight and slamming  
7 the juvenile detention officer to the floor, and  
8 rendered him -- he got knocked out, unconscious.

9 Q. And you said you gave a deposition.  
10 Did you testify at trial in that  
11 matter?

12 A. No. I gave a deposition.

13 Q. Okay. And that involved a juvenile  
14 custody situation, and a use of force; is that  
15 correct?

16 A. Yes.

17 Q. And that's not on this list, is it?

18 A. No. Like I said, by you going over  
19 this, it came to mind that I did miss that.

20 Q. Are there any other cases that you  
21 provided deposition or trial testimony in, that are  
22 not on this list, that have come to your mind?

23 A. No, no.

24 Q. Mr. Foster, in your experience as an  
25 expert, have you ever been offered any cases that you

1 education, besides what we talked about?

2 A. No. That's it.

3 Q. Okay. Great.

4 Mr. Foster, I want to go back to --  
5 still on Exhibit 58, I want to ask a quick question  
6 about Page 3, if you could turn to that.

7 A. Okay.

8 Q. If you'll look about the third  
9 paragraph down, it begins with, "I manage the lagers  
10 cellblock operation."

11 Do you see that?

12 A. Yes.

13 Q. What is the lagers cellblock?

14 A. It should be "large" cellblock.

15 Q. "Large," okay. Okay, thank you.

16 What was your role in the large  
17 cellblock operation in the U.S. Marshals Service, in  
18 the D.C. Superior Court cellblock?

19 A. I was the supervisor of the cellblock.  
20 So on a daily basis, I would supervise other deputy  
21 marshals, and processing housing and cells for the  
22 prisoners that came in from off the street, from  
23 Metropolitan Police Department, or from the D.C.  
24 jail.

25 They would come to the cellblock to

1 present in magistrate court, or for trial. And we  
2 will search, process, feed, and temporarily hold them  
3 in the cellblock until they appear in a court --  
4 their time to appear in court, and then we would  
5 transport them back to the D.C. jail.

6 Q. Okay. All right. So your role at the  
7 large cellblock, in the D.C. Superior Court  
8 cellblock, was related to housing inmates and  
9 pretrial detainees -- when they went to court?

10 Is that accurate?

11 A. Yes. The D.C. Superior Court cellblock  
12 is the largest cellblock in the Marshal Service, as  
13 far as the volume of prisoners and detainees.

14 Q. And who did you report to in that role?

15 A. My chief deputy.

16 Q. Okay. And who did the chief deputy  
17 report to?

18 A. The U.S. Marshal -- appointed  
19 U.S. Marshal.

20 Q. Okay. And how many people reported to  
21 you in your role at the large cellblock?

22 A. At the D.C. Superior Court cellblock,  
23 20 to 30 people.

24 Q. Okay. And --

25 A. Given on a specific date. Sometimes it

1 could be 20 people; sometimes it could be 30 people,  
2 depending on the number of inmates we receive on that  
3 day.

4 Q. Okay. Did you have direct reports in  
5 that role?

6 A. What do you mean by "direct report"?

7 Q. Of those 20 or 30 people that you  
8 mentioned, did some of them report directly to you,  
9 and others reported to those people, in a chain of  
10 command?

11 A. Everybody that worked in the cellblock  
12 reported to me. I was responsible for the care, the  
13 transportation, and appearance in court for all the  
14 inmates.

15 So anything -- any incident happen, it  
16 would have come under my responsibility.

17 Q. Okay. All right. Were the people who  
18 reported to you -- were they detention officers?

19 What was their rank?

20 A. There were detention officers, there  
21 was Deputy U.S. Marshals, and there was guards that  
22 we hired that -- retired police officer, or active  
23 officers that we hired on a daily basis.

24 So that's why I keep saying, the  
25 numbers could be 20 to 30 on a given day, depending

1 on who we assigned to come to work that day.

2 Q. Okay. And how long did you hold that  
3 role in the large cellblock operation?

4 A. From 2008 -- excuse me -- 2009, till  
5 2013. The end of 2013.

6 Q. Okay.

7 A. Well, I would say I -- I managed --  
8 between that time in D.C. Superior Court, if I wasn't  
9 managing the cellblock for a year, we rotated, and I  
10 did two -- I stayed the longest time in that  
11 position: two years.

12 And then I rotate to prisoner  
13 operations, which that details in moving,  
14 transporting up prisoners, and then I'd rotate back  
15 into the cellblock.

16 Q. Okay. Is it accurate, then, that you  
17 spent two years overseeing the large cellblock?

18 A. No. That's not accurate. I would say  
19 I spent -- out of the four or five years, from  
20 2019 -- 2009 to 2013 -- I think that's, what? -- four  
21 years? five years? -- I spent probably three.

22 Q. Okay.

23 A. Three and a half years.

24 Q. Okay. You were also employed at the  
25 juvenile jail in Broward County, Florida, at some

1 Q. And so you taught the class on police/  
2 subject threat assessment encounters, continuing  
3 legal education for attorneys, on April 13th, 2019;  
4 is that correct?

5 A. Yes.

6 Q. Okay. And what about the OC spray for  
7 Officers, in 1988? -- you taught that as well?

8 A. Yes. I taught that as a training for  
9 officers.

10 Q. Okay. Since 1988, how many times have  
11 you taught that OC spray class?

12 A. I haven't taught it at all since that  
13 time.

14 Q. Okay. Since April 2019, how many times  
15 have you taught the police/subject threat assessment  
16 encounter class?

17 A. I haven't put on another course.  
18 That's a course I developed, that I have a copyright  
19 to, and I haven't put on another course.

20 Q. Okay. Bear with me one second.

21 Mr. Foster, I'm going back to what we  
22 previously marked as Exhibit 59.

23 Do you see that?

24 A. Yes.

25 Q. And do you see where it says, "Copies

1                           And for the court reporter's  
2   clarification, that appears to be a photograph from  
3   one of the disciplinary files of one of the  
4   defendants.

5                           Is that where you found that  
6   photograph?

7                   A.       Yes.

8                   Q.       Okay. That chair, what is that,  
9   Mr. Foster?

10                  A.       That is a restraint chair.

11                  Q.       Okay. Very good.

12                           When were you first trained on that  
13   type of chair?

14                  A.       Well, the training I received was that  
15   certification I showed you, but I made sure --

16                  Q.       And the --

17                  A.       Let me finish.

18                           I made sure that the people I supervise  
19   was trained on the use of this particular chair,  
20   because the Marshal Service -- we went to this  
21   particular chair when I was a supervisor in the  
22   cellblock. So I made sure the people who was going  
23   to use it -- or are authorized to use it, got the  
24   proper training, and followed our policy.

25                           Matter of fact, I was the one that

1 ordered the chair, for my office to -- I'm the one  
2 that authorized the purchase of that chair, and made  
3 sure that my deputies and detention officers was  
4 trained on how to properly put somebody in that  
5 chair, and use -- and use the chair -- when to put  
6 somebody in the chair, and how long to keep them in  
7 that chair.

8 Q. Okay.

9 A. So I reviewed my agency policy -- my  
10 district policy on the use of that chair, and made  
11 sure that the individual that I supervised was  
12 properly trained.

13 Me personally, I showed you my  
14 certification on the restraint chair.

15 Q. Okay.

16 A. That's my personal training.

17 Q. So I just want to clarify.

18 Your only personal training on the use  
19 of a restraint chair, was this certification you got  
20 in 2017, correct?

21 A. Yes.

22 Q. Okay. That's what I needed. Thank you  
23 Mr. Foster. I appreciate all that information.

24 Let me ask this: are you a certified  
25 restraint chair trainer?



1 A. No.

2 Q. Okay. Are you familiar with an  
3 organization called the Georgia Peace Officer  
4 Standards Training Council, or POST?

5 A. I'm familiar with the Georgia POST,  
6 yes.

7 Q. Are you POST-certified?

8 A. No, I'm not.

9 Q. Okay. Mr. Foster, have you ever  
10 written any articles on the use of a TASER?

11 A. No.

12 Q. Have you ever written any articles on  
13 the use of -- I'm going to call it "OC spray," but  
14 it's oleoresin capsicum spray.

15 Are you familiar with that?

16 A. Yes.

17 Q. Have you ever written any articles on  
18 the use of OC spray?

19 A. No.

20 Q. Had you ever written any articles on  
21 the use of restraint chairs?

22 A. No.

23 Q. Have you ever written any articles on  
24 the use of transport chairs?

25 A. No.

1                   **Number two is the Fulton County**  
2   **Sheriff's Office standard operating procedure, use of**  
3   **force, No. 1.01; and No. 9 is Fulton County Sheriff's**  
4   **Office, General Order 2009-6, safety restraint check.**

5                   **Do you see that on your report?**

6           A.       Yes, sir.

7           **Q.       Did you review any other policies in**  
8   **formulating your opinion in this case?**

9           A.       I looked at the Gwinnett County policy,  
10   but that didn't help me form my opinion.

11          **Q.       Why didn't it help you form your**  
12   **opinion?**

13          A.       Because we're talking about Fulton  
14   County Sheriff Department.

15          **Q.       Okay. Any other reason why that didn't**  
16   **help you form your opinion, or is that all?**

17          A.       Well, I don't think Fulton -- Gwinnett  
18   County is on trial. These deputies are Fulton County  
19   deputies, and they should go by Fulton County policy.  
20   That's what they was disciplined for.

21          **Q.       Okay. Mr. Foster, does your report**  
22   **identify any correctional standards of care?**

23          A.       No. No, it doesn't.

24          **Q.       Okay. Mr. Foster, are you familiar**  
25   **with the American Correctional Association?**

1 A. Yes, sir, I am.

2 Q. Are you a member?

3 A. No.

4 Q. Do you know whether that organization  
5 has any standards for correctional institutions?

6 A. They have a -- they do have a -- a  
7 guidance. And they have, I guess -- they have  
8 guidance for correctional institute, you know.  
9 Recommendations and guidance.

10 Q. Okay. Did you reference any ACA  
11 recommendations or guidance for standards in your  
12 report?

13 A. In my report.

14 No. I don't think so.

15 Q. Okay. Mr. Foster, are you familiar  
16 with the American Jail Association?

17 A. Yes.

18 Q. Are you a member of that organization?

19 A. No, I'm not.

20 Q. Did you reference any American Jail  
21 Association policies or recommendations in your  
22 report?

23 A. No, I did not.

24 Q. Mr. Foster, are you familiar with a  
25 treatise called "Performance-Based Standards for

1     **Adult Local Detention Facilities," 4th Edition?**

2             A.       I'm not familiar with that.

3             Q.       Okay. Mr. Foster, are you familiar  
4     with an organization called the Commission for  
5     Accreditation of Law Enforcement Agencies?

6             A.       Yes.

7             Q.       Are you a member of CALEA?

8             A.       No individual's a member; only agencies  
9     are.

10            Q.       Okay. Did you mention any CALEA  
11    recommendation for standards in your report?

12            A.       Nope.

13            Q.       Okay. Are you familiar with the  
14    National Commission on Correctional Healthcare?

15            A.       Yes.

16            Q.       Did you mention any National Commission  
17    on Correctional Healthcare standards or  
18    recommendations in your report?

19            A.       No.

20            Q.       Are you familiar with the National  
21    Sheriff's Association?

22            A.       Yes.

23            Q.       And are you a member of the National  
24    Sheriff's Association?

25            A.       I'm not a sheriff. No.

1 Q. Okay. Did you mention any National  
2 Sheriff's Association recommendation or standards in  
3 your report?

4 A. No, I did not.

5 Q. Okay. Thank you.

6 Mr. Foster, tell me all the people that  
7 you spoke to in gathering information to create your  
8 report.

9 A. I spoke to my client.

10 Q. That's Mr. Harper?

11 A. Yes. And Mr. Reese.

12 Q. And Mr. Reese, okay.

13 And what information did Mr. Harper  
14 provide you that assisted you in creating the  
15 opinions in your report?

16 MR. HARPER: Object to the form of the  
17 question. Asked and answered, earlier.

18 You may answer, Mr. Foster.

19 THE WITNESS: The list of items that I  
20 have in my report, No. 12.

21 Q. (By Mr. Loegel) Okay.

22 A. And No. 11, I believe. Yeah, 11. And  
23 the Internal Affairs investigation, and the  
24 supplemental reports.

25 All the items that they receive on

1 discovery, that I believe that I received.

2 Q. Can I summarize that to say, the  
3 documents that Mr. Harper sent you, is how you're  
4 responding to that question?

5 A. Yes.

6 Q. Okay. Perfect. Let me ask you this,  
7 because I want to just clarify a few things.

8 You just mentioned No. 11: the TASER  
9 user manual for Axon. Is that something that you've  
10 had in your possession, or something that was  
11 provided to you by Mr. Harper?

12 A. I have that in my possession.

13 Q. Okay. Have you provided that to  
14 Mr. Harper?

15 A. No.

16 Q. So that's another thing I'd ask that  
17 you provide to Mr. Harper so he can provide to us.

18 If it's a document you relied upon in  
19 the creation of your opinion, and we haven't had it  
20 in response to our subpoena, I'd like to see it.

21 A. Okay.

22 Q. Thank you.

23 Mr. Foster, in general terms, tell me,  
24 what is your process for preparing your opinions?  
25 How did you go about writing these reports?

1           A.       Well, first I review the documents that  
2       were sent to me, and I -- and based on -- and I  
3       review policies and procedure of that agency: Fulton  
4       County.

5                   I look at that, and I go back and look  
6       at the actions that they took. I use my training --  
7       my knowledge from my training and experience.

8           **Q.       Anything else?**

9           A.       No. That's pretty much it.

10          **Q.       Okay. Thank you.**

11                   **Mr. Foster, how do you choose which**  
12       **material to rely upon and which material to not rely**  
13       **upon?**

14          A.       Well, materials that helped me  
15       formulate was the use of force justified, or  
16       incessant, so -- and that it ties into the actions  
17       that law enforcement took. I wouldn't use a -- a  
18       policy that's pertaining to how to write a ticket on  
19       somebody, versus some officer using a TASER.

20          **Q.       Makes sense.**

21          A.       So if I receive something that's not  
22       related, and not -- and goes to the heart of the  
23       issue, then I will use that. That's either swayed me  
24       left or right on how I'm going to formulate my  
25       decision.

1           Q.       And to use your words, material that  
2       sways you left, and then material that sways you  
3       right, how do you make the decision which material to  
4       include in your report?

5           A.       Well, I base that -- based on my  
6       experience and my training, I've come to a conclusion  
7       where this is -- this is proper, or this is something  
8       that, you know, go to the heart of the matter of the  
9       issue that I was hired to do.

10          Q.       Okay. And then you gather the evidence  
11       that supports that -- that heart of the matter; is  
12       that correct?

13          A.       Well, I don't gather the evidence. I  
14       use what's in front of me.

15                    If it support my opinion of the use of  
16       force, I use it. If it doesn't support my opinion,  
17       then that's something that I take in consideration  
18       before formulating my opinion.

19          Q.       Okay. Mr. Foster, in this particular  
20       case, was there anything you asked to see but were  
21       not provided?

22          A.       No. Everything I asked for, I --

23          Q.       Mr. Foster, have you completed your  
24       work on this case?

25          A.       I don't know. I --



1 Q. Mr. Foster, let me strike that  
2 question. I apologize.

3 Have you completed your work on your  
4 expert report?

5 A. As of now, yes.

6 Q. And your report contains all of your  
7 opinions regarding this case; is that correct?

8 A. Yes.

9 Q. Okay. Before you take the stand and  
10 testify in this case, will you let me know if you do  
11 any more work on this matter?

12 A. Yeah. I'll let Mr. Harper, or Reese,  
13 yes.

14 Q. Okay. Mr. Harper, I want to talk about  
15 the meat of your opinions next, okay? And I want to  
16 go over all of the opinions that are in your report.  
17 And I believe they begin on Page 6, but I could be  
18 wrong. But because of the way you've organized your  
19 report, I may miss a few.

20 So I'm going to go over every one I  
21 see. But if I miss one, at the end of this, I'm  
22 going to ask you, "Did I miss any of your opinions."  
23 And I'd like you to be able to tell me if I did,  
24 because I want to be able to catch every opinion  
25 you've offered in this report, okay?

1 A. Okay.

2 Q. And as I'm going along and if I miss  
3 one and you want to share it, stop me and we'll go  
4 through that.

5 So on Page 6 -- I'm sorry. On Page 5,  
6 rather -- and I can show it to you. Let me pull it  
7 up.

8 A. Page 5? Okay.

9 Q. Yes, sir. I'm looking at the portion  
10 directly below where it says "Expert Witness  
11 Opinion."

12 Do you see that?

13 A. Yes.

14 Q. Okay. You were asked to opine on the  
15 use of force by Officers Whitaker, Cook, Saadiq,  
16 Jackson, Roache, Delacruz, Copeland and Strowder; is  
17 that correct?

18 A. Yes. That's what I wrote.

19 Q. All right. Did you opine on -- were  
20 you asked to opine on any use of force by any other  
21 officer?

22 A. This is what I recall. That's what I  
23 wrote.

24 Q. Did you in fact opine on whether any  
25 other officer, other than Whitaker, Cook, Saadiq,

1 Jackson, Roache, Delacruz, Copeland or Strowder, may  
2 have used force.

3 A. It seemed like you asked me the same  
4 question over again.

5 Q. I am. I'm trying to lock it down.

6 A. What I wrote in my report, that's what  
7 I opined on.

8 Q. All right. No one else.

9 A. What I wrote in my report, that's what  
10 I opined on.

11 Q. Thank you.

12 Your next -- the next question I have  
13 for you is a quote here where it says, "Based on my  
14 training, experience and knowledge of accepted use of  
15 force, it is my opinion that Fulton County Sheriff's  
16 Detention Officers Jackson, Cook, Whitaker, Strowder,  
17 Roache, Delacruz, Copeland, used excessive force to  
18 gain compliance with Antonio May."

19 Do you see that?

20 A. Yes.

21 Q. Okay. I'd like to go over what force  
22 each one of these officers used, that you believe  
23 was, A, a use of force; and, B, was excessive.

24 What force did Mr. Jackson use?

25 A. So we'll be here all night.

1 Q. We are, Mr. Foster.

2 A. I would have to go through the -- the  
3 report. First of all --

4 Q. I'll --

5 A. Can I answer?

6 Q. Yes, sir. Of course.

7 A. I thought you was going to say  
8 something.

9 Q. I was. And let me interject, since we  
10 have a moment.

11 I'll purport to you that your report  
12 does not identify each use of force by each officer,  
13 and that's what I'm going to ask.

14 I want to know what force Jackson used,  
15 and then I'm going to ask you what force Cook used,  
16 and then I'm going to ask you what force Whitaker  
17 used.

18 So can you tell me what force Officer  
19 Jackson used on Antonio May?

20 MR. HARPER: Mr. Loegel, let me make a  
21 quick suggestion here that may help us all  
22 out, just for this part of the questioning.

23 If you give Mr. Foster a chance to look  
24 at his report and look at the incident  
25 reports, he may be able to better answer that

1 question, as opposed to answering it fresh  
2 from his recollection.

3 I just think it would help us all. I  
4 don't think there's an issue with him looking  
5 at -- giving him a minute. Maybe take a  
6 five-minute break to let him kind of look at  
7 each disciplinary file and incident report to  
8 be able to answer that question.

9 Otherwise, he's going to say he doesn't  
10 recall.

11 MR. LOEGEL: That's fine, Mr. Harper.

12 Q. (By Mr. Loegel) And let's take five  
13 minutes, Mr. Foster, for you to review whatever  
14 documents in front of you you feel are appropriate,  
15 so that I can -- and I'll give you a -- you know, a  
16 tease on the questions.

17 I'm going to ask you what force each  
18 officer used; and of that force, what you think was  
19 excessive.

20 So take your time, and we'll come back  
21 in about five minutes.

22 MR. LOEGEL: Is that agreeable to  
23 everyone?

24 MR. HARPER: Yes. Sounds good.

25 MR. LOEGEL: All right. Let's go off

1 the record.

2 (A short recess was taken, after which  
3 the following proceedings were had:)

4 MR. LOEGEL: Let's go back on the  
5 record.

6 We're back on the record after a delay  
7 in which Mr. Foster reviewed some additional  
8 material. I'm going to ask some general  
9 questions, and then we'll try to get into more  
10 specifics.

11 Q. (By Mr. Loegel) Mr. Foster, do you  
12 allege that Officer Jackson used excessive force  
13 against Mr. May?

14 A. Yes, I do.

15 Q. And do you allege that Officer Cook  
16 used excessive force against Mr. May?

17 A. Yes, I do.

18 Q. And do you allege that Officer Whitaker  
19 used excessive force against Mr. May?

20 A. Yes.

21 Q. Okay. And you allege that Officer  
22 Strowder used excessive force?

23 A. Yes.

24 Q. And you allege that Officer Delacruz  
25 used excessive force?

1 A. Yes.

2 Q. And do you allege that Officer Copeland  
3 used excessive force?

4 A. Yes.

5 Q. Okay. Do you allege that any other  
6 officers used excessive force against Mr. May?

7 A. As far as I know, what I put in this  
8 report -- I'm trying to figure out which one is  
9 the -- the female officer. I forgot her last name.

10 Q. I might suggest there are two female  
11 officers mentioned in your report: one is Saadiq, and  
12 one is Strowder.

13 A. Strowder, yes. The one that entered  
14 the cellblock with --

15 MR. HARPER: Yes. Mr. Loegel, let me  
16 just interject.

17 THE WITNESS: Strowder -- Strowder was  
18 the one I'm talking about.

19 Q. (By Mr. Loegel) Okay. All right. So  
20 am I correct, then, that you don't allege that  
21 Sergeant Saadiq used excessive force?

22 MR. HARPER: Objection. That misstates  
23 the report here. Misstates his --

24 THE WITNESS: No.

25 MR. HARPER: -- prior testimony.

1 Q. (By Mr. Loegel) You can answer.

2 A. No. I do.

3 What's -- the names that I listed

4 here --

5 Q. Okay.

6 A. -- does.

7 Q. Okay. All right, so that's what I  
8 wanted to clarify.

9 I want to -- and I'm looking at the  
10 portion of your report called "Expert Witness  
11 Opinion." And it says, "Based on my training,  
12 experience and knowledge of accepted use of force, it  
13 is my opinion that Fulton County Sheriff's Detention  
14 Officers Jackson, Cook, Whitaker, Strowder, Roache,  
15 Delacruz, Copeland, used excessive use of force to  
16 gain compliance from Antonio May."

17 Is that an accurate statement?

18 Mr. Foster, is that an accurate  
19 statement?

20 A. Yeah. That is accurate.

21 Q. Okay.

22 MR. HARPER: Mr. Loegel, I think -- and  
23 if I may, I object to the form of this line of  
24 questioning. The report speaks for itself,  
25 and he does mention officers by name



1 throughout the report.

2 I think the issue we're having here is  
3 you're asking him questions based on his  
4 recollection. And if we go through the report  
5 paragraph by paragraph, I think you'll get the  
6 answer you're looking for for each individual  
7 defendant.

8 MR. LOEGEL: That's what I'm about to  
9 do, Mr. Harper, and I appreciate it.

10 But I did not ask a question that  
11 required an objection. But I am grateful for  
12 the opportunity and for the instruction.

13 Q. (By Mr. Loegel) All right. Moving on  
14 to "Initial Approach," on Page 6 of the document,  
15 Mr. Foster, do you see that with me?

16 A. Yes.

17 Q. Okay. In the middle of that paragraph,  
18 you write, "It is my opinion that the approach by  
19 Officer Cook was aggressive in nature, which failed  
20 to deescalate the situation, and did not give Antonio  
21 May enough time to respond to the commands before  
22 being TASE'd."

23 Do you see that?

24 A. Yes.

25 Q. All right. Upon what are you basing

1     **this opinion?**

2             A.       I'm basing that on the use of force  
3     report and the video that I saw. The video outside  
4     the cellblock.

5             **Q.       Okay. Anything else?**

6             A.       The incident report that I listed.

7                     MR. HARPER: Again, I have to object  
8     Mr. Loegel, to taking certain parts -- I know  
9     you're entitled to ask whatever questions you  
10    want. But to pick a particular sentence, you  
11    know, out of a paragraph that tries to explain  
12    his opinion, I think is -- I'm objecting to  
13    the form of that.

14                    MR. LOEGEL: Okay. Let me do this: I  
15    will accept your objection to form as a  
16    standing objection, because I intend to do  
17    that.

18                    The problem I face is that Mr. Foster's  
19    report does not identify report -- any  
20    particular opinion. I've had to go through it  
21    line by line to find his opinions, and try to  
22    get him to clarify them. That's what I intend  
23    to do.

24                    But I'm happy to accept your standing  
25    objection that I'm going to call out

1 That's a opinion of mine.

2 Q. I understand it's your opinion. I want  
3 to know upon what you're basing that opinion on.

4 And I don't want -- we've moved on from  
5 asking you about each particular officer and their  
6 use of force in that form. We're going to go  
7 through, like Mr. Harper said, and look at each of  
8 these sentences.

9 But that's exactly my question.  
10 Mr. Foster. You write, "It is my opinion that the  
11 approach by Officer Cook was aggressive in nature,  
12 which failed to deescalate the situation, and did not  
13 give Antonio May enough time to respond to the  
14 commands before being TASE'd."

15 I want to know what evidence you rely  
16 on in coming to that opinion.

17 A. I relied on the video outside of the  
18 cellblock. I relied on the incident report that  
19 Officer Cook did; also incident report from other  
20 officers.

21 Q. Okay. Anything else?

22 A. TASER report.

23 Q. Tell me what the TASER report is.

24 A. What I mean by the TASER -- him -- I  
25 shouldn't say "TASER report."

1 The TASER was deployed. That's what I  
2 meant. The ways the TASER was deployed, and the use  
3 of force report. That doesn't depict the actions  
4 that was taken by Cook when he deployed his TASER.

5 Q. Mr. Foster, I think --

6 A. And it contradicts other officers in  
7 the incident report.

8 Q. I think we're getting somewhere.

9 Am I correct that your opinion on that  
10 sentence that we've read a couple times, is based on  
11 the material -- is based on the incident report, the  
12 use of force report of Mr. Cook, the use of force  
13 report of others, the incident report of others, and  
14 the video; is that correct?

15 A. Yes.

16 Q. Okay. Is there anything else that you  
17 relied on in forming that opinion?

18 A. My experience.

19 Q. Okay. Anything else?

20 A. That's it.

21 Q. Okay. Did you review any of the  
22 deposition testimony of any of the parties involved  
23 in this case?

24 A. No, I did not.

25 Q. Okay. If the deposition testimony

1 differed from the material that you've identified  
2 here, would it change your opinion?

3 MR. REESE: Object to the form. I  
4 think there's no way to answer that question  
5 without knowing what the deposition testimony  
6 says.

7 MR. LOEGEL: Yes. Listen, I mean --

8 MR. REESE: Speculation.

9 MR. LOEGEL: Well, he's an expert  
10 witness, Mr. Reese. Speculation is why we're  
11 paying him.

12 That said, I will strike the question  
13 and rephrase it.

14 Q. (By Mr. Loegel) Mr. Foster, if the  
15 evidence showed that Officer Cook felt threatened,  
16 would that change your opinion as to whether or not  
17 his initial TASE'ing was an excessive use of force?

18 A. I can't answer that question. Because  
19 what I saw on the video of Cook standing outside the  
20 cellblock, with several officers who already entered,  
21 I couldn't imagine he'd have been that much -- I  
22 couldn't imagine he'd be threatened from an unarmed  
23 person.

24 So I couldn't opine on that -- that  
25 evidence wouldn't be something that I -- I would use

1 to formulate my opinion. Because from what I  
2 observed, from the outside, of several officers  
3 stacked up to enter a small cell, how can any one of  
4 them feel threatened of a unarmed person, with their  
5 TASER out.

6 Q. Okay.

7 A. So . . .

8 Q. Let me ask my next question. And I  
9 want to step back a minute from the actual testimony.

10 You've mentioned in your report, on a  
11 number of occasions -- at a number of points, that it  
12 is your opinion that various officers used excessive  
13 force; is that correct?

14 A. Yes.

15 Q. Okay. What are you basing your opinion  
16 that they used excessive force on?

17 A. The actions.

18 Q. Okay.

19 A. The actions of -- what the officer  
20 took. You don't TASE somebody eight times. That's  
21 excessive.

22 Q. Mr. Foster, is it your opinion that  
23 excessive force is a violation of the statute?

24 MR. HARPER: Object to the form. Calls  
25 for a legal conclusion.

1 A. Yes, I did. Yes, I did. I just don't  
2 recall that question.

3 Q. Do you see the middle of this page,  
4 where it says, "Mr. Foster, are you admitted to the  
5 bar in any state?"

6 A. Right. I see the question, and I said  
7 "no."

8 Q. Yes. And is that still true and  
9 correct?

10 A. That's correct.

11 Q. Okay. And you testified under oath in  
12 this deposition, right?

13 A. Yes.

14 Q. Okay. Mr. Foster, the question in this  
15 one is, "Have you ever been to law school?"

16 Do you see that?

17 A. Right.

18 Q. And you answered "no"?

19 A. Yes. I answered "no." That's correct.

20 Q. Okay. Mr. Foster, next, I'm going to  
21 ask -- the question you were asked was, "Is it your  
22 opinion that it is" -- "Is it your opinion, or is it  
23 your position, that you're an expert on the  
24 application of the 4th, 5th, 8th or 14th Amendments  
25 in the Ninth Circuit of the United States?"

1                                   **And do you see your response?**

2                   A.           "THE WITNESS: I'm not saying that I'm  
3   an expert in that, no,"

4                   Q.           Okay. Do you consider yourself an  
5   expert in the 4th, 5th, 8th or 14th Amendments, in  
6   the 11th Circuit of the United States?

7                                   MR. HARPER: Object to the form.

8                   Q.           **(By Mr. Loegel) You can answer.**

9                   A.           I stand by that question. I'm not a  
10   expert in the 4th, 5th, 6th, 8th -- any amendment.  
11   I'm not a expert in any of the amendments in the  
12   United States.

13                                  MR. HARPER: Let me object to the form.  
14   I'm going to object to the form --

15                                  MR. LOEGEL: I have no question  
16   pending, Mr. Harper.

17                                  MR. HARPER: I'm sorry?

18                                  MR. LOEGEL: I said, I have no question  
19   pending. Your objection is simply an  
20   opportunity to speak.

21                                  This is my deposition. I'd appreciate  
22   it if you wait for me to ask a question before  
23   you object.

24                                  MR. HARPER: Well, I objected to the  
25   question before he answered, and I'm going to



1 state the objection for the record.

2 Mr. Foster is not an attorney, as you  
3 just clarified there. And the question calls  
4 for a legal conclusion.

5 He is here to opine on his experience  
6 involving excessive force. He may not know  
7 that that particular term is under a  
8 particular amendment of the Constitution. I  
9 think it's an inappropriate question that's  
10 outside of what he's here to testify about.

11 He's not here to testify about what  
12 amendment of the Constitution stands for  
13 excessive force, but he is here to testify  
14 about what excessive force means, based on his  
15 experience.

16 And based on that objection, I object  
17 to that question, again, because it calls for  
18 a legal conclusion.

19 MR. LOEGEL: Would you be willing to  
20 admit on the record that Mr. Foster is here to  
21 testify about excessive force?

22 MR. HARPER: Absolutely right. But  
23 he's not here to talk about particular  
24 amendments under the US Constitution.

25 MR. LOEGEL: Thank you, Mr. Harper. I

1 don't know if that question was asked.

2 Q. Understood.

3 A. I don't recall that.

4 Q. I understand you don't recall.

5 Do you consider yourself now an expert  
6 in the legal standard of negligence?

7 MR. HARPER: Object to the form. It  
8 calls for a legal conclusion. The deponent's  
9 here to testify about excessive force.

10 You may answer.

11 THE WITNESS: Your question is if I'm a  
12 expert in a legal standard of -- I'm a expert  
13 in the use of force.

14 Q. (By Mr. Loegel) Okay.

15 A. That's my --

16 Q. So am I correct, then, that you're not  
17 an expert in the legal standard of negligence; is  
18 that correct?

19 MR. HARPER: Object to the form.

20 THE WITNESS: I never proffered myself  
21 as an expert in the legal standards of  
22 negligence.

23 Q. (By Mr. Loegel) Thank you. Thank you,  
24 Mr. Foster.

25 Mr. Foster, do you make any citations

1 to any case law in your report?

2 A. I think I referenced Graham versus  
3 Connor.

4 Q. Can you point me to where you reference  
5 Graham versus Connor in your report?

6 A. I'm looking through my report.  
7 No. I don't see that I reference it.

8 Q. Do you reference any case law in your  
9 report, Mr. Foster?

10 A. No. I did not reference any case law.

11 Q. Do you reference any legal standards in  
12 your report, Mr. Foster?

13 A. No. I do not reference any legal  
14 standard.

15 Q. Okay. You testified earlier that you  
16 review the evidence that you're provided and form  
17 your opinion from it.

18 Do you remember testifying to that?

19 A. Yes.

20 Q. If there were contradictory evidence to  
21 the evidence that you have relied on, would you like  
22 to see it?

23 MR. HARPER: Object to the form.

24 THE WITNESS: Contradictory evidence  
25 that I rely upon?

1 Q. (By Mr. Loegel) No. I'm sorry. Let me  
2 rephrase the question, Mr. Foster.

3 If there were evidence that you've not  
4 seen, that indicates a different fact pattern than  
5 what you've written in your report, would you like to  
6 see it?

7 MR. HARPER: Object to the form.

8 THE WITNESS: I mean, if you have it.

9 I -- I relied -- what I base my  
10 evidence on, on the 13 list of things that  
11 formulate my opinion, and what I received,  
12 so --

13 MR. HARPER: Yes. Object to the form.

14 Mr. Loegel, that question cannot be  
15 answered. It calls for speculation. Without  
16 giving him any type of contradictory evidence,  
17 there's no way for him to know just a general  
18 proposition that something may contradict the  
19 current evidence in the case.

20 If you have something to show him, or a  
21 hypothetical --

22 MR. LOEGEL: Mr. Harper, I appreciate  
23 your soliloquy.

24 MR. HARPER: Well, I'm not trying to  
25 give a speech here, sir, but I think the

1 question is unanswerable.

2 MR. LOEGEL: I appreciate that.

3 THE WITNESS: So once again --

4 Q. (By Mr. Loegel) Go ahead, Mr. Foster,  
5 please.

6 A. I keep saying the same thing over and  
7 over again: I relied on what I have in my report,  
8 based on the stuff I received.

9 Q. Okay. And that's all -- okay. Thank  
10 you, Mr. Foster.

11 Mr. Foster, if there was evidence that  
12 Mr. May lunged at Officer Cook, before Officer Cook  
13 deployed his TASER, would that change your opinion as  
14 to whether or not Officer Cook used excessive force?

15 A. Sir, based on the video that I looked  
16 at and based on the report, that's what it -- that's  
17 what formulated my opinion.

18 So I don't know what you're getting at,  
19 but . . .

20 Q. Actually, Mr. Foster, you based your  
21 opinion on the video and the reports that you were  
22 provided; is that correct?

23 A. And my experience.

24 Q. And your experience. Anything else?

25 A. And my training. My training.

1 Q. Anything else?

2 A. That's it.

3 Q. Okay. Mr. Foster, I'm going to look at  
4 another sentence in this report. I'm still on  
5 Page 6. And it begins -- it's the last sentence of  
6 the page.

7 It says, "The video shows five or six  
8 officers in single file entering May's cell at the  
9 same time. This behavior by the officers is  
10 indicative of excessive force."

11 Do you see that sentence?

12 A. Yes.

13 Q. You've had a chance to read that  
14 sentence?

15 A. Yes.

16 Q. And you're comfortable with that  
17 sentence?

18 A. Yes.

19 Q. Okay. What evidence are you basing  
20 that sentence upon?

21 A. Based on the video that I observed.

22 Q. Anything else?

23 A. Also, the use of force of -- of  
24 displaying a TASER. There was more than one officer  
25 that had their TASER ready to deploy.

1 now, but I had a list of the deployment -- TASER  
2 deployment of the TASER that Officer Cook, Jackson,  
3 Whitaker, used.

4 Q. Okay.

5 A. And --

6 Q. Mr. Foster, let me ask you a  
7 hypothetical question. If the evidence from the Axon  
8 report indicated that one or more of these TASERS  
9 that you wrote in your report, did not make contact,  
10 and did not conduct a circuit, would that change your  
11 opinion as to whether or not the force used against  
12 Mr. May was excessive?

13 A. No. That would not change my opinion.

14 Q. Okay. Mr. Foster, on Page 7, you  
15 write, "Officer Cook stated in his report that while  
16 in the cell, he gave May commands to get down on the  
17 floor and May failed to comply. Officer Cook then  
18 discharged his TASER.

19 "His statement does not match the  
20 sheriff's surveillance video's depiction of what took  
21 place before his entry into the cell."

22 Do you see those sentences?

23 A. Yes.

24 Q. Okay. What are you basing these  
25 statements upon? What evidence have you reviewed

1                   You may answer.

2                   THE WITNESS: No. It would not change  
3                   my opinion.

4                   Q.        (By Mr. Loegel) Okay. Thank you.

5                   Mr. Foster, the next full photograph,  
6                   still on Page 8, begins, "My opinion that the use of  
7                   X2 TASER was excessive use of force and the failed to  
8                   use properly TASER practices, which can result" --  
9                   "which can cause a potentially hazardous situation  
10                  which, if not avoided, could result in death or  
11                  serious injury."

12                  Do you see that?

13                  A.        Yes.

14                  Q.        Okay. I guess I want to break this  
15                  into components.

16                  Your first opinion was that the use of  
17                  the X2 was excessive force; is that correct?

18                  A.        Yes.

19                  Q.        And your second opinion is that the  
20                  officers used -- failed to use proper TASER  
21                  practices; is that correct?

22                  A.        That's correct.

23                  Q.        Okay. What are you basing your opinion  
24                  that the officers failed to use correct TASER  
25                  practices upon?



1           A.       If you continue to read after it says  
2       "death and serious injury," I said, "See TASER  
3       handheld CEW warning, instructions and information,  
4       law enforcement."

5           Q.       I see that. Thank you.

6                   Did you rely on anything else in making  
7       that conclusion, besides TASER handheld CEW warnings,  
8       instructions and information, law enforcement?

9           A.       I relied on my experience and my --  
10       experience of investigating use of force of TASER,  
11       and my experience of -- my training from the company  
12       that made the X2, and training.

13          Q.       Okay.

14          A.       Training on -- TASER training.

15          Q.       Anything else?

16          A.       Use of force --

17          Q.       Okay.

18          A.       -- training.

19          Q.       Mr. Foster, are you a TASER-certified  
20       trainer?

21          A.       No, I'm not.

22          Q.       Okay. Mr. Foster, the last opinion in  
23       that sentence begins with, "which can cause a  
24       potential hazardous situation which, if not avoided,  
25       could result in death or serious injury."

1 Do you see that?

2 A. Yes.

3 Q. Is that a direct quote from the TASER  
4 handheld CEW warnings?

5 A. Yes, it is.

6 Q. Okay. And you wrote, "can cause a  
7 potentially hazardous situation." What potentially  
8 hazardous situation are you referring to here?

9 A. The hazardous situation -- you cannot  
10 TASE -- according to Axon, you cannot TASE someone  
11 who's standing in a pool of water; you cannot TASE  
12 someone who's standing on a ledge; who's -- who's  
13 blind, or pregnant. These are hazardous-situation  
14 rules that you cannot deploy a TASER.

15 Someone who has a -- a heart condition,  
16 you shouldn't use a TASER on them. Someone who's  
17 blind, you shouldn't use a TASER on them on. Someone  
18 who could fall on a hard floor, such as a concrete  
19 floor, can cause a hazardous situation.

20 So it depend on where they're going to  
21 fall. They could hit their head on metal; they could  
22 hit their head on a table, or glass, or -- you can't  
23 TASE somebody. So you have to be . . .

24 Q. Mr. Foster, is it your opinion that  
25 Mr. May was blind?

1           A.       I don't know what his eyesight was,  
2    sir.

3           Q.       Is it your opinion --

4           A.       I don't have an opinion on that.

5           Q.       Do you have an opinion on whether he  
6    had a heart condition?

7           A.       I have no opinion on his medical  
8    conditions.

9           Q.       Do you have any -- do you have an  
10   opinion on whether or not he was standing in water?

11          A.       I don't know --

12          Q.       Do you have an opinion whether he was  
13   standing on a ledge?

14          A.       No. I don't think he was standing on a  
15   ledge.

16          Q.       Okay. Moving on to the next sentence,  
17   if you'll read with me, "The Fulton County Sheriff's  
18   Office use of force report indicate approximate TASER  
19   locations of the chest, left thigh, and stomach.

20                   Do you see that?

21          A.       Where you at? On page --

22          Q.       The middle of Page 8, right below where  
23   we've been discussing -- right below the sentence --

24          A.       "Indicate" -- okay, yeah -- "location  
25   of" -- right.

1 Yes.

2 Q. And is that your opinion? -- that the  
3 restraint chair was effectively used for what it was  
4 intended to be used for?

5 A. What I meant by that is it was used --  
6 to use a restraint chair is to restrain someone, and  
7 they didn't use it properly.

8 So that's what I meant by that. It's  
9 used -- it could be used effectively, if you properly  
10 use it.

11 Q. I'm confused by that statement,  
12 Mr. Foster. But let's -- let me try to clarify it.

13 Is it your opinion that the officers  
14 effectively used the restraint chair?

15 A. No. It's not my opinion that they  
16 effectively use it, no.

17 Q. Right. Is it your opinion that the  
18 officers used it for what it was intended to be used  
19 for?

20 A. No.

21 Q. So your opinion is the opposite of what  
22 this sentence reads. Is that accurate?

23 A. Yeah. I didn't word it properly --  
24 what I intended to word it. What I intended to use  
25 that sentence is, if you use the -- I should have

1 reword it.

2 If you use the restraints chair  
3 properly, that's what the intent of it. They didn't  
4 use the intent of the chair.

5 You understand what I'm getting at?

6 **Q. Mr. Foster, I'm sorry.**

7 **A.** Let me explain it a little better.

8 They didn't use -- what I meant by that  
9 sentence -- and I should have reworded it. I worded  
10 it poorly.

11 What I meant by, if they would have  
12 used the chair what it intended -- how it should be  
13 used, then it would have been effective.

14 It was not effective the way they used  
15 the chair. It was inappropriate the way they used  
16 the chair.

17 **Q. Okay. So your opinion --**

18 **A.** So my opinion is --

19 **Q. You're telling me what your opinion is**  
20 **now; is that correct?**

21 **A.** I didn't hear what you said.

22 **MR. HARPER:** Object to the form. It  
23 misstates testimony.

24 **MR. LOEGEL:** Yes. I'm trying to state  
25 testimony.

1 of here?

2 THE WITNESS: Yeah. I'm good.

3 MR. LOEGEL: Mr. Court Reporter, let's  
4 go off the record.

5 (Thereupon an off-the-record discussion  
6 was had and a short recess was taken, after  
7 which the following proceedings were had:)

8 MR. LOEGEL: Back on the record.

9 Mr. Foster, I have no further questions  
10 for you. Thank you.

11 I understand that you're going to  
12 provide me with Exhibits No. 11 and 12 from  
13 your report; as well as any additional TASER  
14 warnings that you reviewed; as well as any  
15 evidence or material relating to the juvenile  
16 case, which is responsive to Rule 26; any  
17 restraint chair material that you relied upon;  
18 and any material from the deescalation class  
19 that you published.

20 Is that a fair assessment of the  
21 material that you were going to provide?

22 THE WITNESS: Yes.

23 You want the deescalation class?

24 MR. LOEGEL: Yes, sir. I'd like all  
25 the -- whatever material you created in

1 furtherance of that presentation.

2 THE WITNESS: You're talking about that  
3 legal class for police/subject threat  
4 assessment?

5 MR. LOEGEL: Yes, sir.

6 THE WITNESS: Okay. That's what you  
7 want. All right.

8 MR. HARPER: And, Mr. Loegel, based on  
9 the restraint chair information you're looking  
10 for, he did discuss where he got the restraint  
11 chair information from.

12 Was there something else?

13 MR. LOEGEL: He mentioned that there  
14 was some material that he printed out, or --

15 Is that correct, Mr. Foster?

16 THE WITNESS: For the restraint chair?

17 MR. LOEGEL: Yes, sir.

18 THE WITNESS: No. I said I -- I have  
19 my certificate of training. That's a -- a  
20 certificate certifying.

21 MR. LOEGEL: My mistake. In that case,  
22 then, the only material I really want is that  
23 certificate.

24 THE WITNESS: Okay. The certificate,  
25 and the TASER.

1 A detention center. I would say more  
2 detention.

3 Q. And what were your responsibilities?  
4 What was your job title, first, when  
5 you first --

6 MR. LOEGEL: I'm sorry, Mr. Harper. I  
7 only ask the question -- could you please read  
8 the time right now?

9 Is it 3:45?

10 MR. HARPER: Yes.

11 MR. LOEGEL: Okay. Thank you,  
12 Mr. Harper. That's all I have.

13 Q. (By Mr. Harper) All right. Go ahead,  
14 Mr. Foster. What was your job title?

15 A. I was a supervisor over the U.S.  
16 Marshal cellblock in D.C. Superior Court. And that  
17 job entailed supervising the deputies, marshals who  
18 worked in the cellblock, detention officers, and  
19 guards that we hired to . . .

20 And I was responsible of transporting  
21 inmates from the cellblock to the -- back to the  
22 jail, receiving inmates from the jail, or from police  
23 officers off the street; feeding them; make sure they  
24 had the proper medical attention, if we had a medical  
25 situation.



1                   If we had a medical emergency, make  
2     sure that they were transported to the -- seen by the  
3     nurse, or fire medics, and transported to the proper  
4     medical facility, and provide guard service while  
5     they're there and get them processed back; processing  
6     and receiving, transportation to different  
7     jurisdictions throughout the state of Maryland or  
8     Virginia.

9                   **Q.       Before you were a supervisor, what was**  
10    **your job title?**

11                  A.       I was a Deputy U.S. Marshal. The next  
12    above that is supervisor.

13                         And I -- as a deputy, I transported  
14    prisoners; I arrest -- make arrests on the streets  
15    for fugitive arrests, protection of the courts,  
16    and -- and seizing of property.

17                  **Q.       When you worked in the correctional**  
18    **setting, did those inmates receive a medical**  
19    **screening before they were placed in a cell at that**  
20    **location?**

21                  A.       Yes. We asked them -- we reviewed  
22    their medical records. They came with medical  
23    records, and the deputy was responsible to review the  
24    medical information. And it -- they couldn't come  
25    into our cell unless it was medically cleared by a

1 doctor.

2 If they was injured by the police, or  
3 they came from the jail, they had to be medical  
4 cleared, and it was my deputies' responsibility to  
5 review that. If we had someone who was needing of  
6 medical assistance, we got them the medical  
7 assistance.

8 Q. Okay. So is it your testimony, based  
9 on your experience, that the officers were required  
10 to review the medical information of the inmates  
11 before they were placed into a cell?

12 A. Yes. They were required to -- not --  
13 they wouldn't even be accepted into our cell --  
14 detention area on cellblock. Unless they was  
15 medically cleared, we wouldn't even put them in a  
16 cell.

17 If we had to put them in a cell, we got  
18 them medical attention immediately, before we did any  
19 processing.

20 Q. And based on your experience, if an  
21 inmate had tested positive for amphetamines, or  
22 drugs, would that inmate have been placed in a  
23 holding cell, or would they have received some type  
24 of medical treatment?

25 A. They would have been placed in a

1 your definition and understanding -- I'm sorry,  
2 excessive force.

3 What is excessive force, based on your  
4 understanding and experience?

5 A. Excessive force is force that a  
6 reasonable officer would not use to gain control or  
7 compliance of the subject.

8 In other words, force beyond, that's  
9 not reasonable, so that's -- you know, objectively  
10 reasonable.

11 Q. Did you finish?

12 A. Yes.

13 Q. Okay. That's fine.

14 When you worked in the jail setting,  
15 did you guys wear body cameras?

16 A. No, we didn't. Because we had cameras  
17 in every cell and outside the cell.

18 Q. So there was no need for the officers  
19 to wear body cameras, because the entire jail was  
20 under surveillance?

21 A. Yes.

22 Q. Okay. Even inside the holding cell?

23 A. Yes. Every holding cell had a camera,  
24 and every -- outside and inside the cell.

25 Q. Okay. So --

1 Q. Were you able to see, based on the  
2 TASER logs, how many seconds passed from when  
3 Mr. Cook opened that door to when he deployed the  
4 TASER?

5 A. It was, like, within a second or two.  
6 It was very . . .

7 Q. Right. So based on that evidence,  
8 would it make sense to you that Mr. May was any type  
9 of threat to Mr. Cook?

10 A. No. It don't make sense to me.

11 Q. I mean, even if Mr. May was in the cell  
12 standing there nude, based on the objective,  
13 reasonable standard, what threat, based on your  
14 experience and understanding of the law, would  
15 Mr. May have posed by standing at that door nude when  
16 Mr. Cook opened the door?

17 A. My opinion, none at all.

18 Q. So it was --

19 A. He has no weapon in his possession, and  
20 he's not -- he's not hiding anything, so -- I mean,  
21 you have six officers there. So one person -- and  
22 his size versus the officer, it doesn't pose a  
23 threat. He's not, you know, 6'7" and 350 pounds full  
24 of muscle.

25 Q. So would you agree that that action

1 especially after the amount of force that they used  
2 on him.

3 He should have went straight to  
4 medical; not stop and do a video. They could have --  
5 they could have done that while he's been in medical,  
6 treating. That's precious time to waste.

7 Q. Do you recall seeing anything on a  
8 Lieutenant Derrick Paige?

9 When you looked the disciplinary files,  
10 do you recall seeing a Lieutenant Paige?

11 A supervisor.

12 A. Yeah, the supervisor, I recall reading  
13 that report. But if you're getting to something  
14 specific . . .

15 Q. Okay. Do you recall seeing in the  
16 report of supervisor, Lieutenant Paige -- do you  
17 recall the fact that he was also written up regarding  
18 the excessive restraints?

19 A. Yes.

20 Q. All right.

21 A. I recall that.

22 Q. Would you say that, as a supervisor, if  
23 Mr. Paige saw the restraints -- the additional  
24 restraints on Mr. May, would he have had a  
25 responsibility to have them removed immediately?

1 A. Yes. He has a standard of care of the  
2 inmate. Yes.

3 Q. So would you say that Lieutenant  
4 Paige's decision to not remove those restraints,  
5 means that he also constituted excessive force, based  
6 on your experience and training?

7 A. Yes. I would say that.

8 Q. You wrote your opinion based on the  
9 officers that are listed in your report. Are you  
10 aware that there are other officers who have been  
11 sued in this case, based on the Antonio May incident?

12 A. I don't -- I'm not -- I don't recall.

13 Q. Okay. That's fine.

14 A. I really don't recall.

15 Q. All right. Let me just let me know,  
16 then. For the sake of this question, assume that  
17 there were 13 officers total that are defendants in  
18 this case.

19 Do you follow me?

20 A. I follow you.

21 Q. Are you aware of any training or law  
22 that says that officers who observe excessive force  
23 and do not intervene, are also guilty, or responsible  
24 for the inmate, based on excessive force?

25 A. Yes. Yes, I'm aware of that. They

1 have a duty to react.

2 Q. Tell us about your training and  
3 experience as to what officers who witness excessive  
4 force -- can you expound?

5 What should those officers do exactly  
6 when they see other officers committing excessive  
7 force?

8 A. Well, they have a duty to react.  
9 Because they'll be in compliance -- they'll be  
10 explicit in allowing that to happen, in their  
11 presence. So if they don't, they could be  
12 disciplined, or be treated just as the officers that  
13 used the excessive force.

14 So -- and especially a supervisor.  
15 That's failure to supervise -- that's a failure of  
16 supervise. So they have to intervene and stop the  
17 officers have violating their policy.

18 Q. Okay.

19 MR. HARPER: I think that's it for me.

20 I have no further questions.

21 Mr. Reese, do you have any?

22 MR. REESE: Yes.

23

24

25

1 EXAMINATION

2 BY MR. REESE:

3 Q. How you doing today, Mr. Foster.

4 A. I'm hanging in there.

5 Q. Thank you so much, sir, for your time.

6 I know it's a long time, and I'm going to be  
7 extremely short here. We appreciate your services  
8 today.

9 Just to make sure that I'm absolutely  
10 clear, is there anything that you have heard, that  
11 you have been questioned about, or anything that has  
12 been presented today, that changes, or causes you to  
13 question your underlying opinion in the report that  
14 you have submitted in this case?

15 A. Nothing I heard that would change my  
16 opinion at this time.

17 MR. REESE: Thank you, sir. I have no  
18 further questions.

19

20 FURTHER EXAMINATION

21 BY MR. LOEGEL:

22 Q. Just a few followups.

23 Mr. Foster, does your report offer any  
24 opinions about camera usage?

25 A. No, it doesn't.



1 Q. Does your report offer any opinions  
2 about video interpretation?

3 A. No, it doesn't.

4 Q. Does your report offer any opinions  
5 about Lieutenant Paige?

6 A. No, it doesn't.

7 Q. Does your report offer any opinions  
8 about supervisory liability?

9 A. No, it does not.

10 Q. And you mentioned that Lieutenant Paige  
11 violated a standard of care. What standard of care  
12 did Lieutenant Paige allegedly violate?

13 A. Well, an officer -- once you have a  
14 prisoner in custody, you're responsible for their  
15 health and safety, and to make sure that they're not  
16 injured, or they don't injure themselves, or injure  
17 somebody else.

18 That's the standard of care that I'm  
19 talking about.

20 Q. And can you point --

21 A. So if they cannot care for themselves,  
22 they're in your custody, you have to care for them.

23 Q. Can you point me to where that standard  
24 of care is written down, as you've just reported it?

25 A. Well, you can look -- like, the

1 national prisoners standard -- I have to look at up  
2 for you. I can't remember the acronym.

3 But there's a -- association of -- I  
4 think you named one of the association today. I  
5 can't recall it. The national standard of --  
6 national prison standards.

7 Q. Did you mention any standards, or this  
8 national prison standard, in your report?

9 A. No. I did not mention it.

10 Q. Did you produce it in response to our  
11 subpoena for documents?

12 A. No. I can try to bring it up, yes.

13 Q. No, no. My question is, did you  
14 produce it.

15 A. Oh, did I produce it? No, I did not.

16 Q. Did you identify it in your report?

17 A. No, I did not.

18 Q. Does your report offer any opinions  
19 about the duty that an officer may have, regarding an  
20 observed use of force?

21 A. No. My report doesn't offer that.

22 MR. LOEGEL: I have no further  
23 questions. Thank you for your time.

24 THE WITNESS: Thank you.

25 MR. WALLACE: I have one followup.